sufficient evidence to show that the plaintiffs were in fact moneylenders.

On considering the whole of the evidence in the case I have come to the conclusion that the transaction was in fact a loan transaction, i.e. the Bill of Sale of the 11th May, 1952 (Exhibit P. 1) together with the Agreement prepared by Abdul Majid (P.W. 5) dated 11th May, 1952. On this point I accept the evidence of the defendant and that of Abdul Majid, plaintiffs' fifth witness. The Bill of Sale being therefore given by way of security and not being registered in accordance with section 3 of the Bills of Sale Enactment (No. 39 of Johore) I hold to be invalid and the plaintiffs' claim is accordingly dismissed with costs.

With regard to the counterclaim, I give judgment to the defendant in the terms of paragraphs (a), (b) and (c) and costs.

Judgment for the defendant.

Solicitors: *Pillai & Co.; Mitra & Co.*

HARBAN SINGH v. REGINA.

[A. Cr. J. (Murray-Aynsley, C.J.) April 29, 1954]

[Singapore — Magistrate's Appeal No. 247 of 1953]

Criminal law and Procedure — View of the scene of incident by Magistrate in the absence of accused and accused's counsel.

The appellant was charged in the Court below with driving a car at a roundabout in a dangerous manner an offence under s. 25(1) of the Road Traffic Ordinance, 1941, and punishable under the same section. The case for the prosecution was that the accused at 6.55 p.m. on the day in question drove right handed into Canberra Road from Admiralty Road without negotiating the roundabout while at the same moment a police jeep was emerging from the Canberra Road cutting, — the jeep narrowly avoiding a serious accident. The appellant denied the charge but admitted that his car was there at the alleged time but urged that he passed round the roundabout in the correct and legal manner. The learned Magistrate after the conclusion of the evidence visited the scene of the incident in the company of the prosecuting officer but without the presence of the accused or his counsel, and without having informed either of them of the time when he proposed to view the scene. As a result of his visit he formed certain opinions on which his judgment was largely based. No evidence was produced as to the importance of the "lay out".

Held: if the lay out was of importance evidence should have been produced on the subject. Retrial ordered.

MAGISTRATE'S APPEAL.

A. P. Godwin for the appellant.

G. S. Hill (Crown Counsel) for the respondent.

Murray-Aynsley, C.J.: — In this case the Magistrate had a "view" in the absence of the appellant after the conclusion of the evidence He then formed certain opinions on which his judgment seems to have been largely based. If the "lay out" was of importance I think evidence should have been produced on the subject. The defence would then have had an opportunity to deal with the matter.

Retrial ordered.

Solicitors for the appellant: *Donaldson & Burkinshaw.*

CHIEW YOKE KENG & ANOR. v. PUBLIC PROSECUTOR.

[A. Cr. J. (Matthew, C.J.) May 26, 1954]

[K. L. — Magistrate's Criminal Appeal No. 39 of 1954]

Courts Ordinance, 1948, s. 63(2) — Jurisdiction of Sessions Court — Necessity of strict compliance with conditions laid down to give Court jurisdiction.

In this case the appellants were charged before the Sessions Court and convicted of offences under ss. 373 and 372 of the Penal Code. There was nothing on the record to indicate whether there was an application by the Public Prosecutor nor whether the applicants consented to being tried by the Sessions Court.

Held: (1) before a Sessions Court can have jurisdiction in cases punishable with sentences of imprisonment in excess of seven years the two conditions contained in s. 63(2) of the Courts Ordinance must be complied with, i.e. (i) the Public Prosecutor must apply for the case to be tried and (ii) the accused must consent to being so tried; (2) the two conditions must be strictly complied with and unless they are complied with the Sessions Court has no jurisdiction; (3) as there was no evidence in this case that the conditions had been complied with the Sessions Court had no jurisdiction and the convictions must be set aside.

Case referred to:—

(1) *Mohindar Singh v. The King,* (1950) A.C. 345; (1950) M.L.J. 97.

MAGISTRATE'S CRIMINAL APPEAL.

Dato Sir Roland Braddell (*Ng Ek Teong* with him) for the appellants.

E. Brown (Federal Counsel) for the respondent.

Mathew, C.J.: — The appellants in this case were convicted of offences under sections 373 and 372 of the Penal Code, and were each sentenced to four years imprisonment.

Both these offences are punishable with ten years imprisonment, and the Sessions Court has jurisdiction to try these offences only if the provisions of sub-section (2) of section 63 of the Courts Ordinance have been complied with. This sub-section reads:—

"Notwithstanding the provisions of sub-s. (1), a Sessions Court may try any offence, other than an offence punishable with death or imprisonment for life, if —

(a) the Public Prosecutor applies to such Court to try such offence; and

(b) the accused consents, or if more persons than one are charged together with the same offence, all such accused consent, to be tried by such Court."

There is nothing on the record to indicate whether there was an application by the Public Prosecutor nor whether the appellants consented to being tried by the Sessions Court.

The appellants were arrested on the 7th December, 1953, and appeared before the Sessions Court on the 14th December. They were charged, claimed trial and were released on bail. Mr. Rawson appeared on that day to apply for bail, and the Public Prosecutor was represented by a prosecuting police officer who was instructed to inform the Court that the prosecution would be conducted by a Deputy Public Prosecutor. The trial took place on the 18th February, 1954, and for the first time Mr. Rintoul appeared for the first appellant and Mr. Doraisamy Iyer for the second appellant.

Sir Roland Braddell appearing for the 1st appellant (on this appeal) stated that in fact the consent of the appellants to be tried by the Sessions Court was not obtained.

The Deputy Public Prosecutor submitted, in essence, that the appearance of a Deputy Public Prosecutor to prosecute and the fact that both appellants were represented by Counsel at the trial were sufficient indication that the two conditions laid down in section 63(2) had been complied with. He went on to submit that paragraph 17 of the learned President's grounds of judgment indicated that the two conditions had been complied with. He further submitted that nothing was laid down in section 63(2) as to the procedure which had to be followed by a Sessions Court to insure compliance with these conditions. He has argued further that, at the most, there was only an irregularity which was capable of being cured.

I found myself unable to agree with these submission of the Deputy Public Prosecutor. A Sessions Court is vested with jurisdiction to try cases punishable with sentences of imprisonment in excess of seven years, only if two conditions contained in the Courts Ordinance have been complied with. In cases of this nature, jurisdiction is conferred on a Sessions Court only if the Public Prosecutor applies for the case to be so tried, and the accused consents to being so tried. I cannot accept the contention that these two conditions are but mere formalities, and the fact that the case was tried to a conclusion indicated that these conditions had been complied with. There is nothing in the section which requires a Sessions Court to record that these conditions have been complied with, but unless they have been complied with, the Sessions Court is without jurisdiction.

Neither the Deputy Public Prosecutor nor any of the Counsel who appeared for the defence was present when the appellants were charged, and they claimed trial, on 14th February, 1954. It was before they were charged that the learned President should have satisfied himself that he had jurisdiction.

The two conditions must be strictly complied with; there must be an application and there must be a consent. I am not satisfied in this case that this was so. The law requires that the consent of the accused should be obtained before the Sessions Court has jurisdiction, and it must be a positive consent and not one based on acquiescence. In this case it would appear that there was no strict compliance with section 63(2) of the Courts Ordinance.

As was said in *Mohindar Singh v. The King*[1], [(1950) A.C. at p. 360; (1950) M.L.J. at p. 101]:—

"Strict observance of the law as to jurisdiction is one of the fundamental rules in the administration of justice".

I am satisfied in this case that the Sessions Court had no jurisdiction to hear this case, and I must therefore set aside the convictions and sentences.

The proceedings before the Sessions Court being a nullity, it is for the Public Prosecutor to take such further steps as he considers desirable.

Convictions & sentences set aside.

Solicitors for the appellants: *Braddell & Ramani.*

Re LIM KWANG TEIK & ORS.

[A. Cr. J. (Spenser Wilkinson, J.) May 31, 1954]

[Penang — Criminal Revision No. 17 of 1954]

Common Gaming Houses Ordinance 1953 — Proof of lawful entry into premises — Evidence Ordinance s. 114.

In this case the learned Magistrate had held at the trial of the accused on a charge under the Common Gaming Houses Ordinance 1953 that no *prima facie* case had been made out against them. No reasons were given for this decision but it appeared that Counsel for the accused had submitted that the presumptions laid down in the Ordinance could not be raised against the accused because the entry into the house was not made under the provisions of the Ordinance.

Held: (1) where as in this case a senior police officer gave evidence that he raided a particular house upon information then in the absence of anything else it may be presumed that the raid was carried out regularly and in accordance with the provisions of s. 18(1)(d) of the Common Gaming Houses Ordinance and therefore the presumptions laid down in the Ordinance could be raised against the accused.

Cases referred to:—

(1) *Low Wah v. Public Prosecutor* 7 F.M.S.L.R. 197.

(2) *Public Prosecutor v. Eng Lim & Ors.* (1947) M.L.J 78.